IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Dev Narayan Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.558/2003)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 25-3-2003 in Sessions Case No.82/2002 (73/2003) passed by Sh. P.M. Jalutharia, RHJS, Special Judge SC/ST (PA) Cases & Additional Sessions Judge Sawai Madhopur.

Date of Judgment: April 25, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Satyapal Poshwal, Amicus Curiae for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

Challenge in this appeal is to the judgment dated March 25, 2003 of Special Judge SC/ST (PA) Cases and Additional Sessions Judge Sawai Madhopur whereby the appellant Dev Narayan was convicted and sentenced as under:-

U/s.376 IPC:

To suffer rigorous imprisonment for five years and fine of Rs.5000/-, in default to further suffer imprisonment for five months.

U/s.457 IPC:

To suffer rigorous imprisonment for one year and fine of Rs.1000/-, in default to further suffer imprisonment for one month.

The substantive sentences were ordered to run concurrently.

2. It is the prosecution case that informant Bajrangi (Pw.1) submitted a written report (Ex.P-1) on July 1, 2002 to SP Sawai Madhopur with the averments that while her daughter Asha (fictitious name) was sleeping in the house the appellant entered the house and finding Asha alone, committed rape on her. On that report a case was registered under sections 457 and 376 IPC at Police Station Ravajna Doongar and investigation commenced. Site was inspected, statements of witnesses under section 161 CrPC were recorded and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Special Judge SC/ST (PA) Cases Sawai Madhopur and Additional Sessions Judge Sawai Madhopur. Charges under sections 376 and 457 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 15 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. Learned counsel for the appellant in the process of assailing the impugned finding took me through the material on record. A bare look at the evidence adduced at the trial goes to show that age of victim Asha on the date of offence was about 15 to 17 years. As per the report of Medical Jurist Ex.P-6 her hymen was found torn and she was subjected to rape. Potency test of appellant was also performed and the appellant was found potent. In her statement victim (Pw.3) stated that while she was alone in the house the appellant committed the offence.

4. Learned counsel for the appellant canvassed that there was

delay in lodging the FIR which is fatal to the prosecution case. I find no substance in this submission. The Supreme Court in the catena of decisions held that delay in lodging the report in rape matters is not fatal. From the testimony of informant Bajrangi (Pw.1), I find that the report could be lodged when she approached to Superintendent of Police thus she has explained the delay. She stated that on the date of incident she and her husband both were not in the village. Their Lordships of Supreme Court in Harpal Singh Vs. State of H.P. (1981)1 SCC 560 indicated as under:-

> "...The occurrence according to the prosecutrix took place in the night intervening August 22 and 21, 1972. The FIR was lodged on August 31, 1972. The complainant had given reasonable explanation for lodging it after 10 days of the occurrence. She stated that as honour of the family was involved, the members had to decide whether to take the matter to the court or not. It is not uncommon that such consideration delay action on the part of the near relatives of a young girl who is raped."

5. Next contention of learned counsel that the prosecution failed to establish that it was the appellant who committed rape, is also devoid of merit. The victim identified the appellant in the court and Shanti Bai (Pw.2) had witnessed the incident. As also Prakash (Pw.5) cousin brother of victim saw the appellant fleeing from the house after the incident. Therefore it cannot be presumed that the appellant has not committed the offence.

6. In the ultimate analysis, I find that the conclusions arrived at by the learned trial Judge do not have any infirmity.

7. For these reasons, I do not find any merit in the instant appeal and the same stands accordingly dismissed. The conviction and sentence of

the appellant under sections 376 and 457 IPC are confirmed.

(Shiv Kumar Sharma)J.

arn/